

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO**

GIOVANNI RIVERA-DIAZ, et al.,

### **Plaintiffs,**

Civil No. 12-1732 (GAG)

V.

**HUMANA HEALTH PLANS OF PUERTO RICO, INC., et al.**

### **Defendants.**

## **Opinion and Order**

Giovanni Rivera-Díaz (“Rivera-Díaz”), his wife, Ingrid Bazán Guzmán (“Bazán Guzmán”), and the conjugal partnership composed between them<sup>1</sup> filed a complaint against Caribbean Temporary Services (“CTS”), Humana Health Plans of P.R., Inc. (“Humana”), and Solciré Cardona (“Cardona”) in her personal capacity, alleging discrimination on the basis of disability and retaliation. The action is brought pursuant to Title VII, 42 U.S.C. §§ 2000e *et seq.*; the Civil Rights Act of 1991, 42 U.S.C. §§ 1981a, 1983, and 1988; the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101 *et seq.*; and the Constitution of the United States of America. Plaintiff also invokes this court’s supplemental jurisdiction to adjudicate claims pursuant to the Constitution of the Commonwealth of Puerto Rico; Puerto Rico Law 100 of June 30, 1959 (“Law 100”), P.R. LAWS ANN. tit. 29, §§ 146 *et seq.*; and Puerto Rico Act No. 80 of May 30, 1976 (“Law 80”), P.R. LAWS ANN. tit. 29, §§ 185a *et seq.*

The court issued an Opinion and Order dismissing Rivera-Diaz's claims for failure to state a claim upon which relief may be granted (Docket No. 31). Rivera-Diaz now seeks reconsideration of said order alleging the court erred by not applying equitable tolling and by not interpreting Rivera-

<sup>1</sup> Bazán Guzmán's claims are derivative of Rivera-Díaz's, therefore, the court will treat the matter as if Rivera-Díaz were the sole plaintiff in the case.

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3 Diaz's second EEOC filing as an administrative reconsideration request. The court **DENIES**  
 4 Rivera-Diaz's motion for reconsideration.

5 **I. Standard of Review**

6 Motions for reconsideration are generally considered under FED. R. CIV. P. 59 or 60,  
 7 depending on the time such motion is served. Perez-Perez v. Popular Leasing Rental, Inc., 993 F.2d  
 8 281, 284 (1st Cir. 1993). Whether under Rule 59 or Rule 60, a motion for reconsideration cannot  
 9 be used as a vehicle to relitigate matters already litigated and decided by the court.  
 10 Villanueva-Mendez v. Vazquez, 360 F.Supp. 2d 320, 322 (D.P.R. 2005). These motions are  
 11 entertained by courts if they seek to correct manifest errors of law or fact, present newly discovered  
 12 evidence, or when there is an intervening change in law. See Rivera Surillo & Co. v. Falconer Glass.  
 13 Indus. Inc., 37 F.3d 25, 29 (1st Cir. 1994) (citing F.D.I.C. Ins. Co. v. World University, Inc., 978  
 14 F.2d 10, 16 (1st Cir. 1992); Cherena v. Coors Brewing Co., 20 F. Supp. 2d 282, 286 (D.P.R. 1998)).  
 15 Hence, this vehicle may not be used by the losing party "to repeat old arguments previously  
 16 considered and rejected, or to raise new legal theories that should have been raised earlier." National  
Metal Finishing Com. v. BarclaysAmerican/Commercial, Inc., 899 F.2d 119, 123 (1st Cir. 1990).

17 **II. Discussion**

18 In his opposition to Defendants motion to dismiss, Rivera-Diaz did not argue that equitable  
 19 tolling applied to his claims or that his second EEOC complaint should be considered a  
 20 reconsideration order to his original EEOC complaint. Rivera-Diaz merely argued his claims were  
 21 timely because he filed his judicial complaint within ninety days of receiving the second right to sue  
 22 letter. Therefore, Rivera-Diaz attempts to make these arguments for the first time in a motion for  
 23 reconsideration. "It is generally accepted that a party may not, on a motion for reconsideration,  
 24 advance a new argument that could (and should) have been presented prior to the district court's  
 25 original ruling." Cochran v. Quest Software Inc., 328 F.3d 1, 11 (1st Cir. 2003) (holding district  
 26 court did not abuse discretion in refusing to reconsider its decision based on novel arguments). It  
 27 is for this reason the court **DENIES** Rivera-Diaz's motion for reconsideration.

28 **III. Conclusion**

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2 Pursuant to the opinion and analysis above, the court **DENIES** Rivera-Diaz's motion for  
3 reconsideration.

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5 **SO ORDERED.**

6 In San Juan, Puerto Rico this 5th day of March 2013.

7 *s/Gustavo A. Gelpí*

8 GUSTAVO A. GELPI  
9 United States District Judge  
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